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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

FAIRFAX COUNTY SCHOOL BOARD,
Petitioner,

v.

FAIRFAX COVENANT CHURCH,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1) Whether the School Board's rental policy that charges only religious groups an escalating rental rate for use of the School Board's facilities during nonschool hours is a content-based requirement that violates the Church's rights under the Free Speech Clause and the Free Exercise Clause?

2) Whether the School Board's 1982 rental policy that charges only religious groups an escalating rental rate for use of the School Board's facilities during nonschool hours violates the Establishment Clause because it treats religious groups worse than other community groups renting the facilities?

2) Whether the Fourth Circuit correctly ruled that this case does not present the issue of whether the district court should grant "prospective relief only" under *Chevron Oil v. Huson*, 404 U.S. 97 (1971)?

Table of Contents

STATEMENT OF THE CASE 1

I. THE FOURTH CIRCUIT'S OPINION CORRECTLY APPLIED THIS COURT'S PRECEDENTS TO THIS CASE 3

A. The Lower Courts Correctly Applied *Widmar v. Vincent* to this Case 3

B. *Widmar* Upheld Weekly Church Use of an Open Forum for Worship Services over a Multi-year Period of Time 5

II. THIS COURT HAS REPEATEDLY REJECTED THE "FINANCIAL SUBSIDY" ESTABLISHMENT CLAUSE ARGUMENT THAT THE SCHOOL BOARD RAISES ANEW IN THIS CASE 8

A. There Is No Government Subsidy In This Case 8

B. There is no Establishment Clause Violation When the Government Provides a Neutral Benefit to All 10

III. SINCE *WIDMAR v. VINCENT*, THERE IS NO CONFLICT AMONG THE COURTS ON THESE EQUAL ACCESS ISSUES 12

IV. THE *CHEVRON OIL* DOCTRINE DOES NOT APPLY TO THIS CASE 16

A. This Case Does Not Raise a *Chevron Oil* Issue. 17

B. The School Board is Asking This Court to Move In the Opposite Direction of This Court's Jurisprudence 18

CONCLUSION 19

Table of Authorities

Cases:

Arkansas Writers' Project, Inc. v. Ragland,
481 U.S. 221 (1987) 5

Board of Education v. Mergens,
496 U.S. 226 (1990) 7

Chess v. Widmar,
635 F.2d 1310 (8th Cir. 1980) 6

Chevron Oil v. Huson,
404 U.S. 97 (1971) 3, 16

Concerned Women for America v. Lafayette County and Oxford Public Library,
883 F.2d 32 (5th Cir. 1989) 16

Crandon v. United States,
494 U.S. 152 (1990) 12

Davis v. Boget,
50 Iowa 15 (1878) 13

Forsyth County v. Nationalist Movement,
120 L.Ed.2d 101 (1992) 5

Grace Bible Fellowship v. Maine School Area District,
941 F.2d 45 (1st Cir. 1991) 16

Gregoire v. Centennial School District,
907 F.2d 1366 (3rd Cir. 1990) 15

Harper v. Virginia Department of Taxation,
509 U.S. ___, 125 L.Ed.2d 74 (1993) 16

Keegan v. University of Delaware,
349 A.2d 14 (Del. 1974) 14

Lamb's Chapel v. Center Moriches Union Free School District,
508 U.S. ___, 124 L.Ed.2d 352 (1993) 7

Leathers v. Medlock,
499 U.S. 439 (1991) 5

Mueller v. Allen,
463 U.S. 388 (1983) 10

Nichols v. School Directors,
93 Ill. 61 (1879) 13

O'Hara v. School Board of Sarasota County,
432 So.2d 1356 (Fla.Dist.Ct.App. 1983) 13

Pratt v. Arizona Board of Regents,
110 Ariz. 466, 520 P.2d 514 (1974) 13

Resnick v. East Brunswick Tp. Bd. of Ed.,
77 N.J. 88, 389 A.2d 944 (1978) 13

Simon & Schuster v. Crime Victims Board,
116 L.Ed.2d 476 (1991) 5

Southside Estates Baptist Church v. Board of Trustees, 115 So.2d 697 (Fla. 1959) 13

State ex rel. Gilbert v. Dilley,
145 N.W. 999 (Neb. 1914) 13

Wallace v. Washoe County School District,
818 F.Supp. 1346 (D. Nev. 1991) 15

Walz v. Tax Commission,
397 U.S. 664 (1970) 10

Widmar v. Vincent,
454 U.S. 263 (1981) . . . . . passim

Witters v. Washington Department of Services for the Blind, 474 U.S. 481 (1986) 10

Zobrest v. Catalina Foothills School District,
509 U.S. ___, 125 L.Ed.2d 1 (1993) 10

Statutes:

42 U.S.C. §1983 2

STATEMENT OF THE CASE

Fairfax County School Board ("School Board") operates 172 school buildings in northern Virginia and has an annual operating budget of over $850 million a year. The School Board opens its buildings for meetings by community groups during nonschool hours. During 1991, the School Board received about 8500 applications from groups and individuals to meet in the school facilities. Some of these applications were multiple ones from the same group, and many of the applications were from school-related groups. Religious groups also meet there. In 1992, 51 churches were meeting in the schools. Over the ten year period before the litigation, the number of religious groups meeting in the schools has varied from 38 to 91.

Regulation 8420 is the School Board's policy governing community use of school facilities. Regulation 8420 allows a broad range of community groups to meet in the schools, including (Cert. Pet. at 60a):

- youth groups (Scouts, 4-H, others)
- Fairfax County employee organizations
- cultural and civic groups
- colleges and universities
- churches
- state government agencies
- federal government agencies
- private organizations and individuals

The School Board allows these various groups to meet regularly in the school buildings on a long term, multi-year basis. For example, a large number of Boy Scouts troops have met at School Board buildings for approximately 80 years (Cert. Pet. at 3a).

A wide variety of community groups meet in the Fairfax County schools. By School Board Regulation 8420, many of them pay no rent at all. Other groups pay a rental rate that covers all of the school district's expenses related to renting the facilities. The School Board's Regulation 8420 singles out churches and religious groups, and charges them an escalating rental rate based on how long they have met in the public schools.

The Standard Operating Procedure for Community Use of School Facilities -- Church/Religious Organizations spells out the disparate fee schedule for religious groups more precisely:

First five years of use	pay regular fee schedule
6th year of church use	pay two times the regular fee schedule
7th year of church use	pay three times the regular fee schedule
8th year of church use	pay four times the regular fee schedule
9th year of church use and thereafter	pay five times the regular fee schedule

Fairfax Covenant Church ("Church") is an evangelical Christian church that has met in various Fairfax County school buildings for approximately 12 years. It is currently constructing a building (Cert. Pet. at 5a). The Church filed a lawsuit under 42 U.S.C. §1983 challenging the constitutionality of the policy as well as seeking $287,456.60 in back rental overpayments.

The district court ruled that the rental rate policy violated the First Amendment, but ruled that the Church could not recover damages because of this Court's decision in *Chevron Oil v. Huson,* 404 U.S. 97 (1971). *Fairfax Covenant Church v. Fairfax County School Board*, 811 F.Supp. 1137 (E.D. 1993); Cert. Pet. at 20a. Both sides cross-appealed to the Fourth Circuit.

A unanimous panel agreed with the district court that the disparate rental rates for religious groups violated the First Amendment. *Fairfax Covenant Church v. Fairfax County School Board*, 17 F.3d 703 (4th Cir. 1994); Cert. Pet. at 1a. The Fourth Circuit, however, reversed the district court on the *Chevron Oil* issue and said the case did not present a new rule of law, which is necessary to trigger the *Chevron Oil* analysis. The Fourth Circuit said, "we are satisfied, as was the district court, that the holding in *Widmar*, a 1981 decision, unremarkably controls the decision here and that the district court did not establish a new principle." Cert. Pet. at 13a; 17 F.3d at 710. The School Board has sought this Court's review of the Fourth Circuit's decision.

I.

THE FOURTH CIRCUIT'S OPINION CORRECTLY APPLIED THIS COURT'S PRECEDENTS TO THIS CASE

A. The Lower Courts Correctly Applied *Widmar v. Vincent* to this Case.

The Fourth Circuit and the district court correctly relied upon this Court's decision in *Widmar v. Vincent,* 454 U.S. 263 (1981) to rule that Fairfax County School Board

violated the Free Speech Clause and the Free Exercise Clause of the First Amendment with its content-based policy of charging religious groups an escalating rental rate to meet after hours in school buildings, while allowing other community groups to pay a lower rental fee. The Fourth Circuit said that *Widmar* "unremarkably controls" the decision in this case. The School Board operates a public forum opened to a wide variety of community groups by both policy and practice. Yet, it singles out churches and other religious groups to pay an onerous financial burden based solely upon the content of the churches' speech.

As the Fourth Circuit ruled, "[w]e can find no basis to distinguish the circumstances essential to the Court's holding in *Widmar* from those of record here." Cert. Pet. at 8a; 17 F.3d at 707. In *Widmar*, this Court ruled that the University of Missouri could not prohibit a Christian student group from meeting on campus for worship services, as it had done weekly for four years, because the university allowed virtually all other student groups to meet on campus.

In *Widmar* this Court stated the general rule of "equal access" -- that is, that the government must treat religious groups the same as all other groups in the terms or conditions for access to meet in a facility generally open to the public. This Court in *Widmar* said that content-based exclusions from an open forum triggers review under the Free Speech Clause's compelling state interest test. *Widmar*, 454 U.S. at 270. In this case, the Fourth Circuit correctly found that there was no meaningful constitutional distinction between a policy that banned religious meetings and a policy

that subjected religious meetings to unique financial burdens.[1]

B. *Widmar* Upheld Weekly Church Use of an Open Forum for Worship Services over a Multi-year Period of Time.

The School Board urges this Court to review the Fourth Circuit's decision by wrongly asserting that a government entity would violate the Establishment Clause if it allowed a religious group to meet weekly in an open forum for a long period of time at the same rent charged all other community groups. This Court has already addressed that very issue in *Widmar v. Vincent*, and rejected the same arguments then that the School Board raises now. The facts of this case are indistinguishable from those in *Widmar*.

In *Widmar*, this Court ruled that there was no Establishment Clause violation for a student religious group to meet weekly for worship services for four years. In fact, this Court ruled that the government would violate the Free Speech Clause if it banned only religious groups from using an open forum when it allowed all other groups to meet there.

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[1] The School Board's disparate rental policy also violates the Church's First Amendment right to be free of content-based financial burdens. This Court has repeatedly condemned content-based financial burdens on expressive activity as violating the Free Speech Clause. *See Forsyth County v. Nationalist Movement*, 120 L.Ed.2d 101 (1992); *Simon & Schuster v. Crime Victims Board*, 116 L.Ed.2d 476 (1991); *Leathers v. Medlock*, 499 U.S. 439 (1991) and *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221 (1987). The School Board's policy also violates the Free Exercise Clause. The Church raised these arguments to both the Fourth Circuit and the district court. The Church renews both of these arguments before this Court.

This Court said that the students' meetings in *Widmar* contained religious worship:

> A typical Cornerstone meeting included prayer, hymns, Bible commentary and discussion of religious views and experiences.

454 U.S. at 265, n.2.

These student worship meetings occurred weekly for four years before they were banned by university officials, according to the Eighth Circuit's lower court opinion in *Widmar*. In *Chess v. Widmar*, 635 F.2d 1310 (8th Cir. 1980), the Eighth Circuit said:

> From 1973 until 1977, Cornerstone sought and obtained permission to use University facilities for its ***weekly*** meetings and events.

635 F.2d at 1313 (emphasis added).

This Court held in *Widmar* that there is no Establishment Clause violation when a church uses an open forum for a multi-year period for weekly worship services. This Court said that "an open forum in a public university does not confer any imprimatur of State approval on religious sects or practices ...." *Widmar,* 454 U.S. at 274. The main reason there is no Establishment Clause violation is because "the forum is available to a broad class of nonreligious as well as religious speakers ...." *Id.*

The facts in this case parallel those of *Widmar*. Fairfax Covenant Church meets weekly for Sunday morning worship services at the School Board's open forum. The Church has met weekly for a number of years. Many secular

groups have been allowed to meet weekly for meetings over many years (80 years for the Boy Scouts). *Widmar* says that in such a situation, the School Board must allow religious groups to meet on the same terms and conditions as other community groups.[2]

Therefore, there is no Establishment Clause violation when a church uses an open forum for worship services on the same terms and conditions as other community groups use the open forum. This Court repeated that holding in *Board of Education v. Mergens,* 496 U.S. 226 (1990) and last term in *Lamb's Chapel v. Center Moriches Union Free School District,* 508 U.S. ___, 124 L.Ed.2d 352 (1993). The Fourth Circuit correctly applied the law in this case, ruling that the School Board violated the Church's free speech rights and right to free exercise of religion. There is no need for this Court to review that decision.

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[2] The School Board wrongly argues that it is still an open question whether it violates the Establishment Clause for a religious group to use an open forum on a long term basis. The School Board refers to footnote 2 in *Lamb's Chapel* which describes how the church had sought permission to hold its Sunday morning worship services at one of the schools, and permission was denied. The footnote ends, "The Church did not challenge this denial in the courts and the validity of this denial is not before us." 124 L.Ed.2d at 358, n.2. The School Board reads too much into this footnote. It does not say, "this issue has never been ruled on by this Court;" it simply states that the issue is not raised in this case. The specific issue of a church using an open forum on a weekly basis for a multi-year period was decided in *Widmar v. Vincent.* Footnote 2 in *Lamb's Chapel* does not contradict or overrule the holding of *Widmar.*

II.

THIS COURT HAS REPEATEDLY REJECTED THE "FINANCIAL SUBSIDY TO CHURCHES" ARGUMENT THAT THE SCHOOL BOARD RAISES ANEW IN THIS CASE

A. There Is No Government Subsidy In This Case.

The School Board argues incorrectly that the Church would receive a "financial subsidy" from the government in violation of the Establishment Clause if the Church paid the same rent as all other community groups. The School Board bases its "direct subsidy" Establishment Clause argument on a defective and abstract concept. The School Board points out that even the higher rates a church pays to use the school buildings is less than a church would pay if it rented a private building on the open market, or constructed its own building. The difference between this market rate and the School Board's rental rate, according to the School Board, is a "government subsidy" that raises Establishment Clause concerns. This argument is simply wrong.

First, the "government subsidy of religion" argument is wrong because in this case the Church receives no government money, assets or property at all. Churches receive nothing more than temporary access to meet in a building that remains under the full control of the School Board. The only money that changes hands in this case is the Church paying extra rent to the School Board to meet in the school buildings during nonschool hours.

Second, the School Board admits that the noncommercial (lower) rate covers all of the School Board's expenses. (Cert. Pet. at 44a). From the School Board's

perspective, it is giving nothing to the groups who pay the noncommercial rate. There is no government "subsidy" here. In fact, the extra rent paid by the churches is pure profit to the School Board.[3]

It is a strange argument that treating churches the same as all other groups violates the Constitution, so churches must be treated worse than other community groups. The district court made a clear-cut statement filled with common sense when it said:

> Treating churches the same as everyone else, which Fairfax County School Board easily could do, cannot be viewed as treating churches better than everyone else.

Cert. Pet. at 27a; 811 F.Supp. at 1141.

The School Board urges this Court to extend Establishment Clause doctrines prohibiting government financing of religion to situations in which the government gives nothing to churches, but in fact receives money from the churches. This Court should reject the School Board's invitation to hear this case on that point.

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[3] The Church is not saying that the Establishment Clause requires the government to charge religious groups using an open forum a minimal fee that covers the government's costs. The constitutional requirement is equal treatment (see section II-B). A government entity could offer an open forum at no cost to religious groups if it offers it for free to all other groups.

B. There Is No Establishment Clause Violation When the Government Provides a Neutral Benefit to All.

This case does not present an Establishment Clause question about government subsidies to religion. At most, this case presents the question of whether a church can receive the "government benefit" of access to an open forum on the same conditions and terms as everyone else, without violating the Establishment Clause. This Court has upheld such plans in cases like *Witters v. Washington Department of Services for the Blind*, 474 U.S. 481 (1986), *Mueller v. Allen*, 463 U.S. 388 (1983), *Walz v. Tax Commission*, 397 U.S. 664 (1970) and last term's decision in *Zobrest v. Catalina Foothills School District*, 509 U.S. ___, 125 L.Ed.2d 1 (1993). In these cases, this Court said there is no Establishment Clause violation for religious groups to partake of a governmental benefit that is neutrally available to a broad array of the community.

In *Zobrest*, the Supreme Court restated the principle earlier stated in *Mueller* and *Witters*, and then cited *Widmar v. Vincent* as supporting that proposition:

> For if the Establishment Clause did bar religious groups from receiving general governmental benefits, then "a church could not be protected by the police and fire departments, or have its public sidewalks kept in repair." *Widmar v. Vincent*, 454 U.S. 263, 274-75 (1981) (internal quotation marks omitted). Given that a contrary rule would lead to such absurd results, *we have consistently held that government programs that neutrally provide benefits to a broad*

> *class of citizens defined without reference to religion are not readily subject to an Establishment Clause challenge just because sectarian institutions may also receive an attenuated financial benefit.* Nowhere have we stated this principle more clearly than in *Mueller v. Allen,* 463 U.S. 388 (1983) and *Witters v. Washington Department of Services for the Blind,* 474 U.S. 481 (1986) ...

Zobrest, 125 L.Ed.2d at 10 (emphasis added).

Therefore, the critical issue is how does the School Board treat other community groups that rent school facilities? Those groups pay the lower, noncommercial rate to rent the buildings. The School Board singles out churches to pay higher rent, based solely on the religious content of their speech.

The error in the School Board's Establishment Clause theory is that it focuses only on religious groups. Every group, secular or not, receives the same "benefit" that churches receive. The Boy Scouts, the Girl Scouts, the Azerbaijan Cultural Association, the Citizens for a Free Vietnam and other community groups also "save" money, because they don't have to rent private buildings or construct their own meeting halls. Every group meeting at the School Board's buildings get the same "benefit" because anyone can rent the school buildings. Any benefit received by the Church here is one easily available to a wide range of groups. There is no need to review the Fourth Circuit's opinion on this point because it complies with this Court's holdings in *Witters, Mueller, Walz* and *Zobrest*.

III.

SINCE *WIDMAR v. VINCENT*, THERE IS NO CONFLICT AMONG THE COURTS ON THESE EQUAL ACCESS ISSUES

The School Board attempts to paint a picture of conflict among the lower courts on the issues raised in this case by citing a number of attorney general opinions, statutes and state court decisions. This "conflict" is illusionary, and at best shows that many states are still not obeying this Court's clear commands on equal access announced in *Widmar, Mergens* and *Lamb's Chapel.*

This Court should not consider the attorney general's opinions, because they are not authoritative interpretations of state law. Justice Scalia, in his concurring opinion in *Crandon v. United States,* 494 U.S. 152 (1990), said that attorney general's opinions are advisory opinions that this Court does not grant deference to as authoritative administrative interpretations. *Crandon,* 494 U.S. at 177. More importantly, attorney general opinions are not court adjudications of constitutional issues.

Also, most of them were written before *Widmar v. Vincent. Widmar* so changed the area of equal access law, that any opinions written before *Widmar* are outdated if they do not conform with the principles announced in *Widmar.* The attorney general opinions written after *Widmar* show that attorney generals still widely refuse to obey what this Court has ruled in *Widmar, Mergens*, and *Lamb's Chapel.*

The same problem exists with the various state statutes cited by the School Board to show a conflict. First, they are state statutes, not court decisions deciding the First

Amendment issues surrounding equal access or the Establishment Clause. More accurately, these show state legislatures that refuse to obey this Court's rulings in *Widmar, Mergens*, and *Lamb's Chapel*.

This Court should deny certiorari in this case, but if granted, this Court should do so to rule once again that school districts and states cannot violate the First Amendment's principles allowing religious groups equal access to open forums on the same terms and conditions as all other groups. The attorney generals and state legislatures should not be allowed to defy the decisions of this Court.

Also, the School Board refers to a group of obsolete, pre-*Widmar* state court decisions to demonstrate a conflict among the lower courts. These cases are *Pratt v. Arizona Board of Regents,* 110 Ariz. 466, 520 P.2d 514 (1974), *O'Hara v. School Board of Sarasota County*, 432 So.2d 1356 (Fla.Dist.Ct.App. 1983), *Southside Estates Baptist Church v. Board of Trustees*, 115 So.2d 697 (Fla. 1959), *Nichols v. School Directors,* 93 Ill. 61 (1879), *Davis v. Boget*, 50 Iowa 15 (1878), *State ex rel. Gilbert v. Dilley,* 145 N.W. 999 (Neb. 1914) and *Resnick v. East Brunswick Tp. Bd. of Ed.*, 77 N.J. 88, 389 A.2d 944 (1978).

These cases do not create clashing interpretations requiring this Court's intervention to resolve. First, none of these cases ruled that school districts must charge religious groups more money for renting school facilities for a long period of time than non-religious groups. These decisions say in essence that school districts should ban long-term religious groups altogether because of Establishment Clause concerns. This clearly conflicts with *Widmar v. Vincent.*

Second, all but one of the cases were decided before

Widmar v. Vincent -- Pratt (1974), *Southside Estates* (1959), *Resnick* (1978), *Nichols* (1879), *Davis* (1878) and *Gilbert* (1914). The continued vitality of these decisions depends totally on their consistency with *Widmar*. Any conclusions in these state court decisions to prohibit religious groups from long term use of school facilities available to others cannot stand in the light of *Widmar,* which recognized equal access protection for a weekly worship service held for a number of years by a student group on a university campus. *Widmar* has so changed the legal landscape in the area of equal access law that it is inaccurate to refer to these pre-*Widmar* cases as somehow creating a conflict among the lower courts that this Court needs to resolve.

The only post-*Widmar* case (*O'Hara*) did not even mention *Widmar* and instead relied exclusively on the state constitution. 432 So.2d at 1358. In fact, many of those decisions relied on their state constitutions' establishment clauses to make the point that long term church use of a school would be unconstitutional. *Southside Estates,* 115 So.2d at 700; *O'Hara,* 432 So.2d at 1358 and *Pratt*, 520 P.2d at 515-517. The Supreme Court ruled in *Widmar* that the government cannot use state constitutional establishment clauses to trump the federal free speech rights of religious speakers and deny them access to open forums. 454 U.S. at 275-276.

Third, there was at least one pre-*Widmar* state supreme court decision that rejected the Establishment Clause position held by the other state courts -- *Keegan v. University of Delaware*, 349 A.2d 14 (Del. 1974). In a case that foreshadowed *Widmar,* the Delaware Supreme Court ruled that the University of Delaware could not prohibit a Roman Catholic priest from performing Mass for university students in the university-owned common areas of a student

apartment building. The Mass was to be performed on a weekly, long term basis. The Delaware Supreme Court said such religious use was permissible because other student groups were allowed to meet there.

The School Board also cites two federal cases in a misleading way to demonstrate further "conflict" with the Fourth Circuit's ruling in this case. On further examination, neither case conflicts with what the Fourth Circuit ruled.

In *Wallace v. Washoe County School District,* 701 F.Supp. 187 (D. Nev. 1988), the district court for Nevada refused to grant a preliminary injunction to a Baptist church that sought access to a school building to meet for its weekly worship services. But the School Board failed to mention that the district court later reversed itself in a subsequently published decision. The district court, on cross motions for summary judgment, granted the church a permanent injunction and allowed the church to meet weekly for worship services in the empty school building. *Wallace v. Washoe County School District,* 818 F.Supp. 1346 (D. Nev. 1991).

In *Gregoire v. Centennial School District,* 907 F.2d 1366 (3rd Cir. 1990), *cert. den.* 498 U.S. 899 (1990), the Third Circuit declared unconstitutional a school district policy that banned religious speech in its open forum. The Third Circuit based its opinion on this Court's decisions in *Widmar* and *Mergens.* In *Gregoire,* Campus Crusade for Christ, an evangelical Christian group, had sought permission to rent the facility for an illusionist's performance. There was no disparate rental rate for religious groups in *Gregoire,* because the policy at issue totally banned religious groups from meeting there. The Third Circuit struck down the entire policy. *Gregoire,* 907

F.2d at 1383. *Gregoire* is not a case in which the Third Circuit "upheld" a content-based rent structure against religious groups.

On the contrary, the Third Circuit interpreted *Widmar* consistently with other circuit courts to say that government entities cannot exclude religious speakers from forums open to a wide array of speakers. *See also Concerned Women for America v. Lafayette County and Oxford Public Library,* 883 F.2d 32 (5th Cir. 1989) (Mississippi public library cannot exclude women's prayer group from auditorium open forum) and *Grace Bible Fellowship v. Maine School Area District,* 941 F.2d 45 (1st Cir. 1991) (Maine school district cannot exclude church's evangelistic Christmas banquet from school open forum).

Therefore, there is no conflict on these important equal access issues for this Court to resolve. This Court should deny the request to review this case.

IV.

THE *CHEVRON OIL* DOCTRINE DOES NOT APPLY TO THIS CASE

Last term, in *Harper v. Virginia Department of Taxation*, 509 U.S. ___, 125 L.Ed.2d 74 (1993), this Court expressed dissatisfaction with the "prospective relief only" doctrine spelled out in *Chevron Oil v. Huson,* 407 U.S. 97 (1971). This Court specifically ruled in *Harper* that new rules of law must be given full retroactive effect in all civil cases if the new rule was applied to the parties in the case in which it was announced. While eliminating this "selective prospectivity" portion of the *Chevron Oil* doctrine, *Harper* left unresolved whether *Chevron Oil* still applied to cases of

"pure prospectivity." This Court may desire to address the continuing vitality of this remaining "pure prospectivity" wing of the *Chevron Oil* doctrine, however, this is not the case to accomplish that purpose for two reasons.

First, this case does not actually raise a *Chevron Oil* issue. The lower courts resolved the questions of law by a straightforward application of *Widmar*.

Second, the School Board is asking this Court to move in the opposite direction that it has indicated it wants to go with this doctrine. Specifically, the School Board wants this Court to resuscitate the *Chevron Oil* doctrine, when this Court has indicated that it wants to abandon it completely.

A. This Case Does Not Raise a *Chevron Oil* Issue.

The Fourth Circuit corrected the district court's erroneous application of *Chevron Oil's* "prospective relief only" doctrine to this case. Under this doctrine, courts may apply a decision prospectively only if the case presents a new principle of law or overrules clear past precedent. *Chevron Oil*, 404 U.S. at 106. The district court denied the Church's request for compensatory damages by invoking the *Chevron Oil* doctrine and saying that its ruling against the School Board was a novel application of law.

The Fourth Circuit ruled that the district court should not have invoked the *Chevron Oil* doctrine, because "the holding in *Widmar*, a 1981 decision, unremarkably controls the decision here and that the district court did not establish a new principle." Cert. Pet. at 13a; 17 F.3d at 710. This case simply does not present a *Chevron Oil* issue. Because the district court's opinion did not establish a new principle

of law, the Fourth Circuit said there was nothing in the case to trigger application of *Chevron Oil's* prospective relief doctrine. If this Court wants to revisit the *Chevron Oil* doctrine, this is not the case to do it, because that doctrine is not present here.

B. The School Board is Asking This Court to Move In the Opposite Direction of This Court's Jurisprudence.

The School Board is asking the Supreme Court to revive the *Chevron Oil* doctrine, when just last year in *Harper*, a majority of this Court indicated that the *Chevron Oil* doctrine should be totally discarded. For example, although *Harper* did not formally overrule *Chevron Oil,* Justice O'Connor said in her dissenting opinion that it in effect did. *Harper,* 125 L.Ed.2d at 98 and 99. Justice O'Connor's statement drew this response from Justice Scalia, who was in the majority:

> I am not arguing that we should "cast overboard our *entire* retroactivity doctrine with . . . [an] unceremonious heave-ho." . . . There is no need. We cast over the first half six Terms ago in *Griffith*, and deep-sixed most of the rest two Terms ago in *James B. Beam* . . . What little, if any, remains is teetering at the end of the plank and needs no more than a gentle nudge.

Harper, Scalia concurring, 125 L.Ed.2d at 94, n.2.

If this Court is looking for a case to overrule *Chevron Oil,* this is not the case because there is no new rule of law here. The lower courts simply applied clear principles from

Widmar to decide this case. The Fourth Circuit ruled that there was no *Chevron Oil* issue in this case, and that ruling does not need to be reviewed by this Court.

CONCLUSION

For the above-stated reasons, Fairfax Covenant Church urges this Court to deny the School Board's petition for a writ of certiorari.

Date: May 16, 1994

Respectfully submitted,

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